

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of)	
1991)	

**COMMENTS OF THE
ALLIANCE FOR TELECOMMUNICATIONS INDUSTRY SOLUTIONS**

The Alliance for Telecommunications Industry Solutions (ATIS) hereby submits these comments in response to the Federal Communications Commission’s (Commission) above-referenced *Notice of Proposed Rulemaking (NPRM)* released January 22, 2010.¹ In this *NPRM*, the Commission seeks comment on proposed revisions to its rules promulgating the Telephone Consumer Protection Act (TCPA)² that would harmonize its rules pertaining to prerecorded telemarketing calls with the Federal Trade Commission’s recently amended Telemarketing Sales Rule.³ As a leading developer of technical standards relating to telecommunications network interconnection and interoperability, architecture, management and maintenance, ATIS appreciates the opportunity to offer comments in this proceeding.

¹ In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, *Notice of Proposed Rulemaking*, FCC 10-18 (rel. January 22, 2010).

² Telephone Consumer Protection Act, Pub.L.No. 102-243, 105 Stat. 2394 (1991), codified at 47 U.S.C. § 227.

³ See *Telemarketing Sales Rule, Final Rule*, Federal Trade Commission, 73 Fed. Reg. 51164-01 (2008) (2008 *Final Rule Amendments*).

I. Background

ATIS is a global standards development and technical planning organization committed to providing leadership for, and the rapid development and promotion of worldwide technical and operations standards for information, entertainment and communications technologies using a pragmatic, flexible and open approach. ATIS' membership is diverse, including all stakeholders from the Information and Communication Technology (ICT) industry – wireline and wireless service providers, equipment manufacturers, competitive local exchange carriers, data local exchange carriers, providers of commercial mobile radio services, broadband providers, software developers, consumer electronics companies, digital rights management companies, and internet service providers.

Nearly 600 industry subject matter experts from more than 250 ICT companies work collaboratively in ATIS' 18 open industry committees, which focus on a broad range of priorities for the ICT industry, including network architectures and platforms, the ordering and billing of services, E9-1-1, cyber security, the reliability and interoperability of current and next generation technologies, the seamless delivery of converged wireline and wireless services such as Internet Protocol television (IPTV) over multimedia platforms, and the networks of the future.

II. Technical Considerations for Prerecorded Telemarketing Calls

In the *NPRM*, the FCC seeks comment on proposed revisions to its rules governing prerecorded telemarketing calls⁴ (also known as “robocalls”) to make them consistent with the Federal Trade Commission’s (FTC’s) recently amended Telemarketing Sales Rule. The FCC’s proposed changes include:

- (1) requiring sellers and telemarketers to obtain telephone subscribers’ express written consent (including electronic methods of consent) to receive prerecorded telemarketing calls even when there exists an established business relationship between the caller and the consumer;
- (2) exempting certain federally regulated healthcare-related calls from the general prohibition on prerecorded telemarketing calls to residential telephone lines;
- (3) requiring that prerecorded telemarketing calls include an automated, interactive mechanism by which a consumer may “opt out” of receiving future prerecorded messages from a seller or telemarketer; and
- (4) adopting a “per campaign” standard for measuring the maximum percentage of live telemarketing sales calls that a telemarketer lawfully may drop or “abandon” as a result of the use of automated dialing software or other automated dialing equipment.⁵

The FCC notes that these changes would remove certain differences in the treatment of entities that operate outside of the FTC’s jurisdiction but are subject solely to the FCC’s TCPA rules and further prevent residential telephone subscribers from receiving unwanted telephone calls and solicitations.⁶ Currently, as noted in the *NPRM*, “entities under the sole jurisdiction of the Commission – such as common carriers (including telephone companies and airlines), banks, and insurance companies – are subject to less restrictive standards.”⁷ While the overall goal of harmonizing the FTC’s and FCC’s rules regarding treatment of prerecorded telemarketing calls is headed in the right direction, ATIS, notes that there are instances where the FCC’s less restrictive standard for prerecorded calls should continue to

⁴ 47 C.F.R. § 64.1200.

⁵ *NPRM* at 2.

⁶ *Id.*

⁷ *NPRM* at 1.

apply to common carriers, especially in such cases where telephone companies may use an auto-dialer type function to contact a subscriber for non-commercial purposes (e.g. to test phone lines during repairs or to detect fraudulent billing practices by subscribers).

ATIS recognizes the FCC's efforts to align its prerecorded telemarketing rules with the FTC's rules and agrees that such changes may benefit subscribers. However, it is important to note the negative impact that "robocalls" can have on the telecommunications network. In particular, we note that a large volume of these calls can result in network congestion.⁸ ATIS believes that, as the FCC takes steps to implement the proposed revisions or other rules related to "robocalls," it should accommodate the reasonable needs of telecommunications providers to manage their networks in a manner that enables the delivery of high quality and reliable service to residential and non-residential users, including First Responders and E9-1-1 calls.

Network management ensures that the communications systems can operate effectively and interoperate seamlessly by allowing telecommunication service providers to expeditiously identify and resolve problems, including those related to traffic congestion.⁹ ATIS notes that much of its technical work is focused on the management of telecommunications networks. For instance, the ATIS Next Generation Interconnection Interoperability Forum (NGIIF) addresses matters related to the installation, maintenance, management and testing guidelines for interconnected telecommunications and signaling networks, including local exchange routing processes and processes related to the

⁸ See ATIS Telecom Glossary 2007 at <http://www.atis.org/glossary/> defining congestion as "in a communications switch, a state or condition that occurs when more subscribers attempt simultaneously to access the switch than is able to handle, even if unsaturated."

⁹ In any network, when there is too much data traffic at a node that the network slows down or starts losing data, it is known as network congestion. It degrades quality of service and also leads to delays, lost data, or e.g. dropped calls on a telephone network.

convergence of existing and Next Generation Network (NGN) Internet Protocol (IP) technologies and services.

ATIS NGIIF has been actively engaged in developing technical guidelines that address potential congestion of telecommunications networks caused by the mass calling capabilities of auto-dialers and the practices of auto-dialer users. The NGIIF is presently developing auto-dialer guidelines that will assist auto-dialer vendors, end-users, providers, and telecommunication service providers to make use of uniform practices to interact with the telecommunications network. These guidelines will help telecommunications service providers to maximize call completion, maintain the robustness of the network, and allow auto-dialer services to perform effectively. Additionally, the NGIIF is developing technical solutions to address the impact of mass call blasts on the telecommunications network. The NGIIF subject matter experts are also examining how large volumes of calls frequently cause the degradation of service on the telecommunications network. Some examples would be short duration calls, usually those launched by companies using high capacity auto-dialers to serve customers purchasing notification and advertising services for communication, i.e., Telemarketers, Informational (educational, medical, political, etc.), or Emergency Notification Systems (ENS).

When a high volume of prerecorded calls flood the network in a particular geographic area, it could have the effect of delaying telephone subscribers from getting through to First Responders, or impeding priority routing of the Government Emergency Telephone System (GETS)¹⁰ and Wireless Priority Service (WPS)¹¹ calls. ATIS notes that even though the FCC

¹⁰ Government Emergency Telephone System is “a special federal government telecommunications service that provides National Security and Emergency Preparedness (NS/EP) users with priority switched voice and voiceband data communications during periods of emergency or crisis.”

would continue to permit certain types of robocalls,¹² the network does not know the difference between these types of calls and other telephone subscriber calls. Any robocalls, regardless of how they are categorized, could cause network congestion and potentially impact network reliability and jeopardize First Responder calls. Thus, the FCC's decision to continue to permit certain types of robocalls should not be seen as permission to contribute to network congestion.

ATIS believes that auto-dialer users, providers, or vendors should work in cooperation with telecommunication service providers and exchange information including call management guidelines to lessen the impact of these types of calls on the network. ATIS asks that the FCC encourage auto-dialer users, providers, and vendors to work more cooperatively with telecommunications service providers in advance notification procedures, testing, and developing best practices for auto-dialers. The FCC should consider establishing a registration process between and amongst the service providers and the auto-dialer service users or providers in a given area. ATIS NGIIF would welcome the opportunity to participate with the FCC in the development of such a process.

In addition to network congestion caused by the normal course of business conducted by well-intended auto-dialer users, ATIS NGIIF believes the FCC should give attention to fraudulent or deliberate malicious uses of auto-dialer systems that could impair network

¹¹ Wireless Priority Service is a service developed by the National Communications System to provide national security and emergency preparedness (NS/EP) personnel priority for emergency calls made from cellular telephones while performing their emergency duties.

¹² *NPRM at 3* indicates that the FCC "rule revisions proposed [in the *NPRM*] would make no changes with respect to categories of prerecorded messages that are not covered by [the FCC's] TCPA rules. Those categories include calls by or on behalf of tax-exempt non-profit organizations; calls for political purposes, including political polling calls and other calls made by politicians or political campaigns; and calls for other noncommercial purposes, including those that deliver purely "informational" messages – for example, prerecorded calls that notify recipients of a workplace or school closing. In addition, because the TCPA's restrictions on prerecorded messages do not apply to calls initiated for emergency purposes, the proposed rule revisions would not affect messages sent to consumers to alert them to emergency situations."

reliability. Any individual or entity may purchase an auto-dialer for his or her own purposes including deliberately causing network congestion. This provides further basis for the FCC to encourage cooperative relationships between auto-dialers and telecommunication service providers.

III. Other Considerations

In addition to the congestion issues described above, the FCC in the *NPRM* seeks comment on whether it should require that prerecorded telemarketing calls include an automated opt-out mechanism.¹³ This provision enables those subscribers who answer a prerecorded call an immediate mechanism to avoid future calls by selecting to opt-out. ATIS encourages the FCC to clarify in the proposed revisions to its rules that auto-dialers must: 1) transmit a valid telephone number to which a subscriber could place a return call; and 2) include a valid telephone number in any prerecorded message that a subscriber may call and exercise the right to opt-out of future telemarketing calls.

¹³ *NPRM* at 39.

IV. Conclusion

ATIS recognizes the FCC's efforts to align its prerecorded telemarketing rules with those of the FTC and that these changes will benefit both the consumer and industry. ATIS encourages the FCC to address network reliability, management and congestion issues in its implementation of its proposed revisions to the prerecorded telemarketing call rules.

Respectfully submitted,

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